GAHC010072162021

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2783/2021

SABAH AL ZARID
S/O LATE MUAZZED ALI
RESIDENT OF 5 GNB ROAD, PANBAZAR, GUWAHATI , DIST KAMRUP (M)
ASSAM, 781001

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY . DEPARTMENT OF HOME, GOVT. OF ASSAM,

2:THE DIRECTOR GENERAL OF POLICE
C/O ASSAM POLICE HEADQUARTERS
B.K KAKOTI ROAD
ULUBARI
ASSAM
GUWAHATI 07

3:THE POLICE COMMISSIONER

C/O THE COMMISSIONER OF POLICE
PANBAZAR
GUWAHATI 781001

4:THE OFFICER IN CHARGE
PANBAZAR POLICE STATION
GUWAHATI 78100

For the Petitioner(s) : Mr. M. Biswas, Advocate

For the Respondent(s) : Mr. H. Sarma, Advocate

Date of hearing : 09.11.2023
Date of Judgment : 20.12.2023

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (CAV)

1. The Petitioner herein had invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution alleging infraction to Article 21 of the Constitution for violating his basic fundamental rights by the Respondent Authorities for handcuffing the Petitioner without just cause. The Petitioner by way of the instant writ petition has also sought for setting aside of the order dated 30.03.2021 passed by the Assam Human Rights Commission in AHRC Case No.3021/2020-21(9).

2. The brief facts of the instant case are that the Petitioner is a Law Graduate who had enrolled his name in the State Bar Council in the year 2008 bearing Enrollment No.486/2008. On 05.10.2016, an FIR was lodged by one Md. Faizul Haque, Home Guard of the Assam Police alleging inter alia that the Petitioner had on 05.10.2006 manhandled him, as the informant did not allow the Petitioner to park his car near his house. The said case was registered and numbered as Panbazar P.S. Case No.435/2016 under Sections 294/325/341/353 of the Indian Penal Code. It is also relevant to take note of that the Petitioner had also filed an FIR against the said Md. Faizul Haque which was also registered as Panbazar P.S. Case No.436/2016 under Sections 294/323/392/511 of the Indian Penal Code on the ground that the said Md. Faizul Haque had verbally and physically abused the Petitioner and tried to

snatch the bag of the Petitioner which contained Rs.10,000/-.

3. After the FIR was lodged by Md. Faizul Haque, a police personnel of the Panbazar Police Station called the Petitioner to the police station on 05.10.2016 and on his visit to the police station, the Petitioner was detained and later on, he was informed that he had been arrested and on the following day i.e. on 06.10.2016, the Petitioner was produced before the learned Chief Judicial Magistrate, Kamrup (M) and thereafter, he was sent to judicial custody. It is the further case of the Petitioner that in violation of all mandates of law and dehors the guidelines issued by the Supreme Court, the Petitioner was handcuffed in the police station and was taken to the MMC Hospital, Panbazar for his medical checkup in handcuffed condition. Further on 06.10.2016, when the Petitioner was produced before the learned Chief Judicial Magistrate, Kamrup (M), he was again handcuffed and on his way back to the police vehicle and was under continuous handcuffed condition throughout his journey from the Court of the Chief Judicial Magistrate Kamrup (M) at Kachari to Central Jail, Guwahati at Lokhra which is about 20 km.

4. It is further seen from the facts narrated in the writ petition that the case against the Petitioner was charge sheeted under Section 294/325/341/353 on 25.10.2016 and was laid before the learned Chief Judicial Magistrate Kamrup (M) on 01.09.2017. Thereafter, the Petitioner entered appearance and charges under Section 353/323 were framed and the trial proceeded against him. During the course of the trial, the prosecution examined as many as 4 (four) prosecution witnesses to bring home the guilt against the Petitioner. The Petitioner examined himself as the sole defence witness. Vide a judgment dated 04.06.2020, the Petitioner was acquitted. It is relevant to take note of

that the Investigating Officer during the course of his trial had admitted that he had handcuffed the Petitioner.

5. The Petitioner being aggrieved at the act of handcuffing, filed a complaint before the Assam Human Rights Commission on 18.09.2020 vindicating his grievances for violation of his basic human rights under Article 21 of the Constitution. The said complaint was registered and numbered as AHRC Case No.3021/2020-21(9). Vide an order dated 30.03.2021, the said complaint so filed by the Petitioner was closed primarily on the ground that the charged officer had expired. The Petitioner therefore being aggrieved has approached this Court by filing the instant writ petition for quashing of the order dated 30.03.2021 and for a direction upon the Respondents and each one of them to pay adequate compensation to the Petitioner for violating his basic fundamental rights by handcuffing the Petitioner without just cause.

6. This Court vide an order dated 21.04.2021 issued notice. The Respondent No.3 i.e. Commissioner of Police had filed an affidavit-in-opposition through the Additional Deputy Commissioner of Police (Crime) Guwahati. In the said Affidavit-in-Opposition, it was mentioned that after the completion of the investigation, the Petitioner was charge sheeted vide charge sheet Case No.69 dated 25.10.2016 against the Petitioner. In paragraph No.7, it was mentioned that the Petitioner was arrested in connection with Panbazar P.S. Case No.435/2016 and thereafter necessary steps were taken as per law. On the allegation that the Petitioner was handcuffed and forwarded to the Court under handcuff condition, it was mentioned that the same could not be ascertained as the Investigating Officer, namely SI Dalim Mahanta had already expired on 28.10.2020. It is further seen from the affidavit that the various allegations

being made in the writ petition to the effect that the charge sheet was without any evidence; the allegation of camaraderie in between the police and the home guard were all denied. It was stated that the charge sheet was submitted only on the basis of the evidence and materials collected during investigation. As regards the acquittal of the Petitioner, it was mentioned that it came under the purview of the learned Trial Court however it was mentioned that in the judgment passed by the learned Trial Court, there was no adverse comment regarding the investigation of the case which was carried out by the Investigating Officer, S.I. Dalim Mahanta.

7. In paragraph No.11 of the said affidavit-in-opposition, it was mentioned that the Petitioner did not approach any higher police authority about his grievance regarding putting of handcuff by the Investigating Officer of the case immediately after his release by the Court. It was reiterated that the handcuffing of the Petitioner by the then Investigating Officer could not be verified as he had already expired on 28.10.2020 whereas the Petitioner had filed the petition before the Assam Human Rights Commission on 18.09.2020 and after dismissal, a Review Petition was filed on 12.10.2020 and the order of the Commission dated 18.01.2021 was received by the Office of the Deputy Commissioner (Crimes) on 19.01.2021.

8. It is further seen from the records that the Petitioner filed an additional affidavit on 01.03.2023 whereby the copies of the orders dated 18.10.2016, 01.09.2017, 12.10.2017, 14.12.2017, 05.02.2018, 24.04.2018 and 22.05.2018 passed by the learned Additional Chief Judicial Magistrate, Kamrup (M) and a copy of the Charge sheet being Charge sheet No.69/2016 dated 25.10.2016 were brought on record and enclosed as Annexure-A (colly) and Annexure-B.

9. This Court upon perusal of the materials on record and more particularly the evidence recorded by the Investigating Officer in G.R. Case No.11279/2016, finds it relevant to observe that in his deposition, the Investigating Officer had stated that the Petitioner had surrendered at the Police Station and the offences against him being non-bailable, the Petitioner was forwarded before the learned Court. In his cross-examination, the Investigating Officer had categorically admitted that he had handcuffed the Petitioner. It is further relevant to take note of that the FIR which was filed against the Petitioner and registered as Panbazar P.S. Case No.435/2016 was in respect to Sections 341/294/325/353 of the Indian Penal Code. Thereupon, the charge sheet was submitted against the Petitioner under Section 341/394/323/353 of the Indian Penal Code and the charges framed against the Petitioner by the Trial Court was under Section 323/353 of the Indian Penal Code. Therefore, from the above, it reveals that except the charge under Section 353, all were in respect of bailable offences.

10. This Court heard the matter on 17.08.2023 and the judgment was reserved. Thereupon, this Court passed an order on 28.09.2023. The said order is reproduced hereinunder:

> "*This Court vide the order dated 17.08.2023 had reserved the instant proceedings for judgment. During the process of drafting the judgment, a question arose as to whether any permission was taken from the concerned Magistrate at the time of producing the petitioner or there was any reason recorded prior to handcuffing the petitioner as per the guidelines laid down by the Supreme Court in the case of* ***Citizen for Democracy vs. State of Assam****, reported in* ***(1995) 3 SCC 743****.*
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> *2. This Court further taking into account the stand which had been taken by the respondents in their affidavit wherein the incident of handcuffing was not admitted*

on account of the fact that the person who had handcuffed the petitioner, had expired finds it relevant that it would be in the interest of justice that the case diary in respect to Panbazar P.S. case No.435/2016 be looked into.

4. At this stage, it is also relevant to take note of that the said Panbazar P.S. Case No.435/2016 was charge sheeted, and thereupon, a GR case being GR Case No.11279/2016 was registered which ended in the acquittal of the petitioner. Therefore, this Court directs the Registry of this Court to requisition the scan copy of the case record of GR Case No.11279/2016 from the records maintained in the establishment of the Chief Judicial Magistrate, Kamrup (M).

5. It is a requirement of law that the case diary has to be prepared in triplicate. One copy of the case diary in the instant case had been submitted along with the charge sheet. The respondent State would be in possession of the remaining two, i.e. duplicate as well as triplicate copy of the case diary.

6. Under such circumstances, Mr. H. Sarma, the learned counsel appearing on behalf of the State respondents shall ensure that either the duplicate or the triplicate copy of the case dairy so maintained be placed before this Court on the next date.

7. List the matter on 10.10.2023 for further consideration."

11. Pursuant to the above order, the photocopy of the case records in G.R. Case No.11279/2016 was placed before this Court. This court however finds it relevant to mention that on 09.11.2023, it was informed to this Court by the learned Government Advocate for the Respondents that the duplicate copy of the case diary could not be traced and the triplicate copy of the case diary was not prepared. As regards the original copy of the case diary, it was mentioned that the Trial Court pursuant to the disposal of the said proceedings returned the case diary to the public prosecutor which could not thereafter be traced out.

12. From the above materials on record, it is clear that the Petitioner had

himself surrendered at the police station and it is an admitted fact by the Investigating Officer that he had handcuffed the Petitioner. This Court upon perusal of the records in G.R. Case No.11279/2016 as well as the orders which have been passed and more particularly the order dated 06.10.2016, does not show that anything was informed to the concerned Magistrate or any permission was taken from the Magistrate for the purpose of putting the handcuffs upon the Petitioner.

13. This Court has duly heard the learned counsels for both the parties at length. Although in the writ petition, there is a challenge to the order dated 30.03.2021 passed by the learned Assam Human Rights Commission in AHRC Case No.3021/2020-21(9), but the points for determination which arises before this Court are :–

(i) Whether the Petitioner who was arrested could have been handcuffed and if so, under what circumstances?

(ii) If there is any violation by the arresting officer, would the Petitioner be entitled for the compensation and if so, to what amount?

14. Let this Court therefore first take up as to whether the handcuffing of the Petitioner was at all justified in the facts of the case. In order to analyze and adjudicate the said point for determination, this Court finds it relevant to take note of some of statutory provision as well as the Assam Police Manual.

15. Section 46 of the Code of Criminal Procedure, 1973 (for short "the Code") deals with the manner of making an arrest. A perusal of the said provision and more particularly Sub-Section (1) of Section 46 stipulates that a person can be arrested by touching or confining the body of the person to be

arrested unless there be a submission to the custody by word or action. Furthermore, Section 46(2) of the Code stipulates that if a person forcibly resists the endeavor to arrest him or attempts to evade the arrest, such police Officer or other person may use all means necessary to effect the arrest. Section 49 of the Code specifically stipulates that the person arrested shall not be subjected to more restraint than is necessary to prevent his escape. Therefore, a conjoint reading of both Section 46 and 49 would show that Section 49 in particular, foreshadows the central principle controlling the power to impose restraint on the person of a prisoner while in continued custody. The use of words that "the person arrested shall not be subjected to more restraint" implies that restraint may be imposed where it is reasonably apprehended that prisoner would attempt to escape but then also it should not be more than what is necessary to prevent him from escaping. This Court also finds pertinent to take note of Section 220 of the Indian Penal Code, 1860 which imposes punishment upon a person who has the legal authority to confine a person and confine such a person contrary to law. Section 220 of the Indian Penal Code being relevant is reproduced hereinunder:

> "***220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law***.—*Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*

16. This Court also finds it relevant to take note of Rule 214 of the Assam

Police Manual which relates to handcuff and their use. The said Rule is reproduced hereinunder:

"***214. Handcuffs and their use*** – *(a) Handcuffs should be kept in good order. If broken, they must be repaired or replaced without delay.*

(b) The principle as regards the use of handcuffs is the same in all cases, whether bailable or non-bailable, viz., they should be used when a prisoner cannot be secured without them. In practice, the following instruction, should be observed in the use of handcuffs in bailable and non-bailable cases respectively :

(i) Handcuffs will generally be employed in non-bailable cases unless the prisoner owing to age, sex or infirmity can be easily and securely kept in custody without handcuffs.

The amount of restraint necessary is however left to the discretion of officers concerned. In certain circumstances the use of handcuffs may not be necessary to prevent escape, but, if for instance the prisoner is a powerful man in custody for a crime of violence, or is of notorious antecedents or disposed to give trouble, or if the journey is long, or the number of prisoners is large, handcuffs may properly be used. Escorts will, in any case, be supplied with handcuffs for use, should necessity arise.

(ii) In bailable cases prisoners should not be handcuffed unless violent, and then only by the order of the officer-in-charge of the police station, the reason for the necessity of this action being entered in the general and case diaries and in the certificate in Form No. 150, Schedule XL (A) (Part I).

(c) When prisoners are handcuffed in file they will be handcuffed in couples, the right wrist of one to the left wrist of the other.

(d) For the use of ropes in addition to handcuffs see the preceding rule. The ropes should be so tied as not to interfere unduly with proper circulation and should be replaced by handcuffs as soon as possible. Whenever a rope is used for securing a

prisoner it will be tied round his waist, the other end being securely fastened to the constable's wrist in such a manner as to prelude the possibility of the rope being jerked out of the latter's hand. The prisoner should never be allowed to go near any cutting edge against which he might be able to severe the rope, or to stand or sit in such a position that the knot is not visible to the constable.

(e) In the event of a constable in charge of a prisoner going aside for any purpose, he must see that the prisoner is properly secured.

(f) Great caution should be exercised at all times in the removal of handcuffs and other fastenings from prisoners en route whether by land of water.

(g) Where these rules are deficient, escorts should be guided by the rules in Part III, so far as they are applicable."

17. In the backdrop of the above provisions, let this Court take note of the law as settled by the Supreme Court by various judgments. His Lordship Krishna Iyer J. (As his Lordship then was) observed in the case of ***Sunil Batra Vs. Delhi Administration*** *reported in* ***(1978) 4 SCC 494*** that the undertrials shall be deemed to be in custody but not undergoing punitive imprisonment. It was categorically observed that fetters, especially bar fetters, shall be shunned as violative of human dignity, both within and without prisons. The indiscriminate resort to handcuffs when accused persons are taken to and from Court and expedient of forcing irons on prison inmates were held to be illegal and should be stopped forthwith save in small category of cases where an undertrial has a credible tendency for violence and escape. It was further observed that humanly graduated degree of iron restraint is permissible if the other disciplinary alternatives are unworkable. The Supreme Court in the said judgment categorically observed that the burden of proof of the ground for imposing iron fetters is on the custodian and if he fails, he would be liable in

law. It was further observed that reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities and is a slur on our culture.

18. A prisoner by a name of Prem Shankar Shukla had sent a telegram from Tihar Jail which led to the institution of a *habeas corpus* proceedings. The brief message which was sent in the telegram runs thus – "In spite of Court order and directions of your Lordship in ***Sunil Batra Vs. Delhi Administration***, handcuffs are forced on me and others. Admit writ of *habeas corpus*". The aforesaid telegram led to the judgment being delivered in the case of ***Prem Shankar Shukla Vs. Delhi Administration*** *reported in* ***(1980) 3 SCC 526***. The leading opinion delivered by His Lordship V.R. Krishna Iyer, J. (as His Lordship then was) dealt with the use of handcuffs. Paragraph Nos. 22, 23, 24, 25, 26, 27, 28 and 30 of the said judgment are quoted hereinunder:

> "*22. Handcuffing is prima facie inhuman and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article 21. Thus, we must critically examine the justification offered by the State for this mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and protecting his personality from barbarity have to be harmonised. To prevent the escape of an under trial is in public interest, reasonable, just and cannot, by itself, be castigated. But to bind a man hand-and-foot, fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in the courts is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture. Where then do we draw the humane line and how far do the rules err in print and praxis?*
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> *23. Insurance against escape does not compulsorily require handcuffing. There are other measures whereby an escort can keep safe custody of a detenu without the indignity and cruelty implicit in handcuffs or other iron contraptions. Indeed, binding*

together either the hands or the feet or both has not merely a preventive impact, but also a punitive hurtfulness. Manacles are mayhem on the human person and inflict humiliation on the bearer. The Encyclopaedia Britannica, Vol. II (1973 Edn.) at p. 53) States "Handcuffs and fetters are instruments for securing the hands or feet of prisoners under arrest, or as a means of punishment". The three components of 'irons' forced on the human person must be distinctly understood. Firstly, to handcuff is to hoop harshly. Further, to handcuff is to punish humiliatingly and to vulgarise the viewers also. Iron straps are insult and pain writ large, aminalising victim and keeper. Since there are other ways of ensuring security, it can be laid down as a rule that handcuffs or other fetters shall not be forced on the person of an under trial prisoner ordinarily. The latest police instructions produced before us hearteningly reflect this view. We lay down as necessarily implicit in Articles 14 and 19 that when there is no compulsive need to fetter a person's limbs, it is sadistic, capricious, despotic and demoralizing to humble a man by manacling him. Such arbitrary conduct surely slaps Article 14 on the face. The minimal freedom of movement which even a detainee is entitled to under Article 19 (see Sunil Batra) cannot be cut down cruelly by application of handcuffs or other hoops. It will be unreasonable so to do unless the State is able to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safe keeping.

24. Once we make it a constitutional mandate that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort — and we declare that to be the law — the distinction between classes of prisoners becomes constitutionally obsolete. Apart from the fact that economic and social importance cannot be the basis for classifying prisoners for purposes of handcuffs or otherwise, how can we assume that a rich criminal or under trial is any different from a poor or pariah convict or under trial in the matter of security risk? An affluent in custody may be as dangerous or desperate as an indigent, if not more. He may be more prone to be rescued than an ordinary person. We hold that it is arbitrary and irrational to classify prisoners, for purposes of handcuffs, into 'B' class and ordinary

class. No one shall be fettered in any form based on superior class differentia, as the law treats them equally. It is brutalising to handcuff a person in public and so is unreasonable to do so. Of course, the police escort will find it comfortable to fetter their charges and be at ease but that is not a relevant consideration.

25. The only circumstance which validates incapacitation by irons — an extreme measure — is that otherwise there is no other reasonable way of preventing his escape, in the given circumstances. Securing the prisoner being a necessity of judicial trial, the State must take steps in this behalf. But even here, the policeman's easy assumption or scary apprehension or subjective satisfaction of likely escape if fetters are not fitted on the prisoner is not enough. The heavy deprivation of personal liberty must be justifiable as reasonable restriction in the circumstances. Ignominy, inhumanity and affliction, implicit in chains and shackles are permissible, as not unreasonable, only if every other less cruel means is fraught with risks or beyond availability. So it is that to be consistent with Articles 14 and 19 handcuffs must be the last refuge, not the routine regimen. If a few more guards will suffice, then no handcuffs. If a close watch by armed policemen will do, then no handcuffs. If alternative measures may be provided, then no iron bondage. This is the legal norm.

26. Functional compulsions of security must reach that dismal degree where no alternative will work except manacles. We must realise that our fundamental rights are heavily loaded in favour of personal liberty even in prison, and so, the traditional approaches without reverence for the worth of the human person are obsolete, although they die hard. Discipline can be exaggerated by prison keepers; dangerousness can be physically worked up by escorts and sadistic disposition, where higher awareness of constitutional rights is absent, may overpower the finer values of dignity and humanity. We regret to observe that cruel and unusual treatment has an unhappy appeal to jail keepers and escorting officers, which must be countered by strict directions to keep to the parameters of the Constitution. The conclusion flowing from these considerations is that there must first be well grounded basis for drawing a strong inference that the prisoner is likely to jump jail or break

out of custody or play the vanishing trick. The belief in this behalf must be based on antecedents which must be recorded and proneness to violence must be authentic. Vague surmises or general averments that the under trial is a crook or desperado, rowdy or maniac, cannot suffice. In short, save in rare cases of concrete proof readily available of the dangerousness of the prisoner in transit — the onus of proof of which is on him who puts the person under irons — the police escort will be committing personal assault or mayhem if he handcuffs or fetters his charge. It is disgusting to see the mechanical way in which callous policemen, cavalier fashion, handcuff prisoner in their charge, indifferently keeping them company assured by the thought that the detainee is under "iron" restraint.

27. Even orders of superiors are no valid justification as constitutional rights cannot be kept in suspense by superior orders, unless there is material, sufficiently stringent, to satisfy a reasonable mind that dangerous and desperate is the prisoner who is being transported and further that by adding to the escort party or other strategy he cannot be kept under control. It is hard to imagine such situations. We must repeat that it is unconscionable, indeed, outrageous, to make the strange classification between better class prisoners and ordinary prisoners in the matter of handcuffing. This elitist concept has no basis except that on the assumption the ordinary Indian is a sub-citizen and freedoms under Part III of the Constitution are the privilege of the upper sector of society.

28. We must clarify a few other facets, in the light of Police Standing Orders. Merely because a person is charged with a grave offence he cannot be handcuffed. He may be very quiet, well-behaved, docile or even timid. Merely because the offence is serious, the inference of escape-proneness or desperate character does not follow. Many other conditions mentioned in the Police Manual are totally incongruous with what we have stated above and must fall as unlawful. Tangible testimony, documentary or other, or desperate behaviour, geared to making good his escape, alone will be a valid ground for handcuffing and fettering, and even this may be avoided by increasing the strength of the escorts or taking the prisoners in well

protected vans. It is heartening to note that in some States in this country no handcuffing is done at all, save in rare cases, when taking under trials to courts and the scary impression that unless the person is confined in irons he will run away is a convenient myth.

30. Even in cases where, in extreme circumstances, handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Otherwise, under Article 21 the procedure will be unfair and bad in law. Nor will mere recording the reasons do, as that can be a mechanical process mindlessly made. The escorting officer, whenever he handcuffs a prisoner produced in court, must show the reasons so recorded to the Presiding Judge and get his approval. Otherwise, there is no control over possible arbitrariness in applying handcuffs and fetters. The minions of the police establishment must make good their security recipes by getting judicial approval. And, once the court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This is implicit in Article 21 which insists upon fairness, reasonableness liberty. The ratio in Maneka Gandhi case and Sunil Batra case, read in its proper light, leads us to this conclusion."

19. In the above quoted paragraphs and more particularly, paragraph Nos. 28 and 30, the Supreme Court observed that tangible testimony, documentary or other, or desperate behavior, geared to making good escape alone would be a valid ground for handcuffing and fettering and even this may be avoided by increasing the strength of escorts or taking the prisoner in well protective vans. It was observed that even in cases where, in extreme circumstances, handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Otherwise under Article 21 of the Constitution, the procedure would be unfair and bad in law. It was further observed that merely recording the reasons would not suffice as that can be a mechanical process mindlessly made and as such, the escorting officer, whenever he handcuffs a prisoner who is produced in the Court must show the

reasons so recorded to the presiding Judge and get his approval. Paragraph No.38 of the said judgment is also pertinent for the purpose of the instant dispute and the same is quoted hereinunder:

> "*38. We clearly declare — and it shall be obeyed from the Inspector General of Police and Inspector General of Prisons to the escort constable and the jail warden — that the rule regarding a prisoner in transit between prison house and court house is freedom from handcuffs and the exception, under conditions of judicial supervision we have indicated earlier, will be restraints with irons, to be justified before or after. We mandate the judicial officer before whom the prisoner is produced to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other "irons" treatment and, if he has been, the official concerned shall be asked to explain the action forthwith in the light of this judgment."*

20. An eminent journalist Mr. Kuldip Nayar, in his capacity as President of "Citizens for Democracy" had written a letter to the Supreme Court on 22.12.1994 stating inter alia that when he visited a Government hospital to see a patient, to his horror he found 7 (seven) TADA detenus put in one room were handcuffed in their beds. This handcuffing was done despite the fact that the room in which these detenus were locked had bars and was locked and there were a posse of policemen standing outside with guns on their shoulders. The said journalist further stated in his letter that he failed to understand how the Assam Government could do all these in spite of various Court orders and as such he drew the attention of State Chief Minister which went in vain for which the said communication was issued to one of the Hon'ble Judges of the Supreme Court.

21. On the basis of the said communication, the Supreme Court treated the letter as a petition under Article 32 of the Constitution and issued notice to the

State of Assam through its Chief Secretary, Home Secretary and Secretary, Health. The said proceedings was disposed of by the Supreme Court vide a judgment rendered in the case of ***Citizens for Democracy Through Its President Vs. State of Assam and Others*** *reported in* ***(1995) 3 SCC 743***. In the said judgment, the Supreme Court took note of its judgment in the case of ***Sunil Batra (supra)*** as well as ***Prem Shankar Shukla (supra)*** and passed certain directions which are enumerated in paragraph Nos. 16 to 21 of the said judgment. The said paragraphs being relevant for the purpose of the instant case are reproduced hereinunder:

> "*16. We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner — convicted or undertrial — while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.*
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> *17. Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.*
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> *18. In all the cases where a person arrested by police, is produced before the Magistrate and remand — judicial or non-judicial —is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.*

19. When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

20. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given by us in para above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

21. We direct all ranks of police and the prison authorities to meticulously obey the above-mentioned directions. Any violation of any of the directions issued by us by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law. The writ petition is allowed in the above terms. No costs."

22. This Court also finds it very pertinent to note paragraph No.3 of the said judgment wherein the Supreme Court clearly observed that the law laid down by the Supreme Court in the case of ***Sunil Batra (supra)*** as well as ***Prem Shankar Shukla (supra)*** and the directions issued therein were binding on all concerned and any violation or circumvention shall attract the provisions of the Contempt of Courts Act apart from other penal consequences under law. The said paragraph No.3 is quoted hereinunder:

"*3. The law declared by this Court in Shukla case and Batra case is a mandate under Articles 141 and 144 of the Constitution of India and all concerned are bound to obey the same. We are constrained to say that the guidelines laid down by this Court and the directions issued repeatedly regarding handcuffing of undertrials and convicts are not being followed by the police, jail authorities and even by the*

subordinate judiciary. We make it clear that the law laid down by this Court in the abovesaid two judgments and the directions issued by us are binding on all concerned and any violation or circumvention shall attract the provisions of the Contempt of Courts Act apart from other penal consequences under law."

23. This Court before dealing on the facts of the instant case finds it relevant to observe that in view of the law laid down by the Supreme Court in the case of ***Sunil Batra (supra)***; ***Prem Shankar Shukla (supra)*** as well as ***Citizens For Democracy (supra)*** and the same being binding on all concerned have rendered Rule 214 of the Assam Police Manual archaic and it is high time that the State needs to incorporate the principles laid down in the said aforementioned three judgments in the Assam Police Manual.

24. In the instant case as noted above, the FIR was lodged against the Petitioner which was registered as Panbazar P.S. Case No.435/2016. The Petitioner has also launched a counter FIR being Panbazar P.S. Case No.436/2016. The offences registered in the FIR against the Petitioner except Section 353 of the Indian Penal Code were all bailable. The Petitioner admittedly surrendered himself before the Police Station. Thereupon, it is not known as to why the Petitioner had to be handcuffed. This very fact was duly admitted by the Investigating Officer before the Trial Court in G.R. Case No.11279/2016 as already noted supra.

25. This Court had duly perused the case records of G.R. Case No.11279/2016 wherein in the orders, there is no reflection that any permission was taken from the Magistrate or for that matter, the Magistrate was duly informed about the reasons for putting iron fetters upon the Petitioner. This Court also finds it relevant to take note of that though

opportunity was given to the State Respondents to produce the Case Diary which as per the law was required to be prepared in triplicate but not a single copy of the Case Diary was produced for the reasons already recorded in the order dated 09.11.2023. Therefore, as it was the burden upon the custodian of the detenu to explain the reasons why the Petitioner was handcuffed and apparent failure on the part of the Respondents to show the reasons that too when the Petitioner himself surrendered clearly shows that the Respondent Authorities and more particularly the Investigating Officer had acted contrary to the law declared by the Supreme Court in the three judgments referred to hereinabove. In that view of the matter, the first issue therefore is decided that the Respondent Authorities and more particularly the Investigating Officer on the facts of the case ought not to have handcuffed the Petitioner and such actions were contrary to the law declared by the Supreme Court and more particularly in the paragraph No.30 of the judgment of the Supreme Court rendered in the case of ***Prem Shankar Shukla (supra)*** as well as paragraph 16 to 21 of the judgments in the case of ***Citizens For Democracy (supra)***.

26. The next issue pertains to as to whether the Petitioner is entitled to compensation and if so, to what amount. The above findings in Issue No.(i) clearly shows that the Respondent Authorities and more particularly the Investigating Officer had violated the Petitioner's rights under Article 21 of the Constitution. The Supreme Court in the case of ***Nilabati Behera alias Lalita Behera Vs. State of Orissa and Others*** *reported in* ***(1993) 2 SCC 746*** had dealt with the aspect of public law relating to public functionaries when the public functionaries had violated the fundamental rights and more so the right of personal liberty under Article 21 of the Constitution. In paragraph No.17 of the said judgment, the Supreme Court had observed that the claim in public law

for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights and such a claim based on strict liability made by resorting to constitutional remedy provided for the enforcement of a fundamental right is distinct from and in addition to the remedy in private law for damages for tort resulting from contravention of the fundamental right. In the concurring opinion rendered by His Lordships A. S. Anand J. (as His Lordship then was) had observed that public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation as exemplary damages in proceedings under Article 32 of the Constitution or under Article 226 of the Constitution for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. It was observed that the purpose of public law is not only to civilize public power but also to assure the citizens that they leave under a legal system which aims to protect the interest and preserve their rights. This Court further finds it relevant to reproduce Paragraph Nos. 17, 34 and 35 of the judgment in the case of ***Nilabati Behera (supra)*** hereinunder:

> "*17. It follows that "a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee fundamental rights, there can be*

no question of such, a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court

of competent jurisdiction or/and prosecute the offender under the penal law.

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law — through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar' granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are

misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma. J."

27. In view of the above settled law laid down by the Supreme Court, this Court is of the considered view that the Respondents are liable to compensate the Petitioner for handcuffing the Petitioner without just cause which violates the mandate of Article 21 of the Constitution of India.

28. Now the question arises as to what should be the compensation that the Respondent Authorities should be directed to pay to the Petitioner. There cannot be a straight jacket formula which could determine the amount of compensation that has to be paid. The compensation which is required to be paid is by applying the principles of strict liability. While awarding compensation, the Court would have to take into consideration the loss/damage that might have been caused to the person who has been handcuffed to re-compensate him/her for such damages. Apart from that, the Court would also have to consider the imposition of compensation as a deterrent to police officers who do not discharge their duties in the proper manner and/or violate the applicable law. The imposition of compensation should also be such that the concerned police officer should follow the applicable law in both letter and spirit and are put on notice that non following of applicable law could result in they being liable to make payment of monetary compensation to the arrestee. In normal circumstances, a direction is to be issued to the State to make payment of compensation and the compensation so paid be recovered from the arresting Officer who had put the handcuffs but in the instant case as the arresting officer has aleardy expired, this Court is of the opinion that such directions would not be proper.

Accordingly, this Court deems it proper to direct the Respondent State to pay the compensation to the Petitioner.

29. Now the question arises as to what would be the compensation that can be directed to be paid by the Respondent Authorities. The Petitioner has neither specified the amount to which the Petitioner would be entitled as compensation nor the Petitioner has placed any material to the effect of loss which has been caused to the Petitioner on account of handcuffing the Petitioner. Be that as it may, the Petitioner is an Advocate and handcuffing the Petitioner and parading him by taking him to the Court and thereafter back to the jail with iron fetters that too without just cause being shown, not only violates the human rights of the Petitioner guaranteed under Article 21 of the Constitution but also demeans his dignity and prestige to carry out his profession of advocacy. No amount of compensation would be therefore sufficient to restore the loss of prestige and dignity to the Petitioner in the present facts. Under such circumstances, this Court considering the loss so suffered by the Petitioner and also taking into account that some amount of compensation is required to be imposed upon the Respondent Authorities as a deterrent, directs the Respondent Authorities to pay a compensation of Rs.5,00,000/- to the Petitioner within a period of 2 (two) months from the date a certified copy of this judgment is served upon the Director General of Police, Assam.

30. With above observations and directions, the instant writ petition stands disposed of.

31. Before parting with the records, this Court finds it relevant to observe that it is high time that the Assam Police Manual is required to be amended by

the Authorities concerned so that the principles laid down in the judgments of the Supreme Court in the case of ***Sunil Batra (supra)***, ***Prem Shankar Shukla (supra)*** and ***Citizens for Democracy (supra)*** as above noted are engrafted to the Assam Police Manual. This Court believes and expects that the Authorities concerned would very soon take note of the suggestion made herein and do the needful.

JUDGE

Comparing Assistant